

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(193)(i)(B), (c)(199)(i)(B), (202)(i)(D) and (207)(i)(D) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(193) * * *

(i) * * *

(B) San Luis Obispo County Air Pollution Control District.

(I) Rule 417, adopted February 9, 1993.

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(199) * * *

(i) * * *

(B) San Luis Obispo County Air Pollution Control District.

(I) Rule 419, adopted July 12, 1994.

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(202) * * *

(i) * * *

(D) Mojave Desert Air Quality Management District.

(I) Rule 464, adopted August 24, 1994.

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(207) * * *

(i) * * *

(D) Mojave Desert Air Quality Management District.

(I) Rule 1102, adopted October 26, 1994.

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[FR Doc. 95-23960 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[KY-087-1-6957a; FRL-5290-5]

Approval and Promulgation of Implementation Plans; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Kentucky State Implementation Plan (SIP) to incorporate new permitting regulations and to allow the Commonwealth of Kentucky to issue Federally enforceable state operating permits (FESOP). This revision consists of Sections 1 through 7 of the State Rules in 401 KAR 50:035, entitled "Permits." On December 29, 1994, the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC), submitted a SIP revision which updates the procedural rules governing the issuance of air permits in Kentucky and fulfills the requirements

necessary for a state FESOP program to become Federally enforceable. In order to extend the Federal enforceability of Kentucky's FESOP program to hazardous air pollutants (HAPs), EPA is also approving Kentucky's FESOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that Kentucky may issue Federally enforceable operating permits for HAPs.

DATES: This final rule is effective November 27, 1995 unless adverse or critical comments are received by October 27, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Yolanda Adams, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT:

Yolanda Adams, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347-3555 x4149. Reference file KY087-01-6957.

SUPPLEMENTARY INFORMATION:**I. Summary of State Submittal**

On December 29, 1994, the Commonwealth of Kentucky through the NREPC submitted revised air permitting rules for approval as part of the SIP. These rules represent Kentucky's consolidated permitting regulations, which include provisions for operating permits for major sources pursuant to title V of the CAA, construction permits for major new sources and major source modifications pursuant to Parts C and D of title I, and operating and construction permits for minor sources and minor modifications pursuant to State law. Thus, this

submittal complements Kentucky's submittal seeking EPA approval of the same regulations as satisfying title V requirements. Separate rulemaking is being conducted with respect to whether these regulations satisfy title V requirements.

Kentucky's December 29, 1994, submittal does not seek to satisfy any specific mandate under the Clean Air Act. As noted above, a separate submittal seeks to satisfy the requirements of title V. Instead, Kentucky's submittal of December 29, 1994, seeks approval of updated State permitting regulations which have superseded previously approved regulations. Kentucky intended with this submittal: (1) to provide a mechanism for intermediate size sources to obtain Federally enforceable limitations to become "synthetic minor sources," and (2) to update the Federally approved regulations to reflect the updated State permitting regulations. Each of these purposes requires evaluation under different criteria. These purposes and the associated EPA criteria for approval are discussed individually in subsequent sections.

A. Federally Enforceable Limitations on Potential To Emit

The first purpose of Kentucky's submittal was to provide a mechanism for intermediate size sources to obtain Federally enforceable limitations such that the sources' potential to emit would be below the size thresholds at which major source permits are required. This mechanism involves FESOPs incorporating the relevant limitations. Kentucky is requesting this authority with respect to HAPs as well as criteria pollutants. This voluntary SIP revision allows EPA and citizens under the CAA to enforce the terms and conditions of Kentucky's FESOP program. Operating permits that are issued under the Kentucky FESOP program after approval into the State SIP and under section 112(l) will provide Federally enforceable limits on an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable operating permits can affect the applicability of Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants, and Federal air toxics requirements under section 112 of the CAA.

Criteria for EPA approval of FESOP programs are specified in a Federal Register document entitled,

"Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules." (see 54 FR 22274, June 28, 1989). In this document, EPA listed five criteria that must be met for a State's minor source operating permit program to be Federally enforceable and, therefore, approvable into the SIP. Kentucky's SIP revision satisfies the five criteria for Federal enforceability of the State's FESOP program.

The first criterion for a state's operating permit program to be Federally enforceable is EPA's approval of the permit program into the SIP. On December 29, 1994, the Commonwealth of Kentucky submitted through the DEP a SIP revision designed to meet the five criteria for Federal enforceability. Today's action will approve these regulations into the Kentucky SIP, and therefore satisfy the first criterion for Federal enforceability.

The second criterion for a state's operating permit program to be Federally enforceable is that the regulations approved into the SIP must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. Kentucky's program meets this criterion in Rule 401 KAR 50:035, section 4(1)(f)1., by requiring the permittee to comply with all conditions of the permit. The rule further states that "Noncompliance shall be a violation of this administrative regulation and, for Federally enforceable permits, is also a violation of 42 U.S.C 7401 through 7671q (the Act) and is grounds for an enforcement action, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application." Hence, the second criterion for Federal enforceability is satisfied.

The third criterion for a state's operating permit program to be Federally enforceable is that the state operating permit program must require all emissions limitations, controls, and other requirements imposed by permits to be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "Federally enforceable" (e.g., standards established under sections 111 and 112 of the CAA). Kentucky's Rule 401 KAR 50:035, section 4(1)(a) explicitly requires that issued permits include emission limitations and standards, including operational

requirements and limitations, that assure compliance with all applicable requirements. The rule further states that Kentucky will not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP or that are otherwise Federally enforceable. Therefore, this section of Kentucky's permits rule satisfies the third criterion for Federal enforceability.

The fourth criterion for a state's operating permit program to be Federally enforceable is that limitations, controls, and requirements in the operating permits be permanent, quantifiable, and otherwise enforceable as a practical matter. With respect to this criterion, enforceability is essentially provided on a permit-by-permit basis, particularly by writing practical and quantitative enforcement procedures into each permit. EPA will review the enforceability of permits using the policy memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and title V of the Clean Air Act (Act)," dated January 25, 1995, which describes the types of limitations that reduce potential to emit in a Federally enforceable manner. Nevertheless, enforceability also requires proper permit program design. Kentucky's regulations (e.g., Rule 401 KAR 50:035, section 4(1)(a) quoted above) provide for fully enforceable limitations. Concerning permanence, permit conditions have the duration provided for under title V (i.e., the conditions expire with permit expiration but are typically renewed with permit reissuance). Consequently, Kentucky's rules provide for the degree of permanence necessary for enforcement of the applicable provisions, and more generally provide that the permit limitations will be fully enforceable.

The fifth criterion for a state's operating permit program to be Federally enforceable is providing EPA and the public with timely notice of the proposal and issuance of such permits, and providing EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. Kentucky's Rule 401 KAR 50:035, section 7 entitled "Procedures for Public Participation" contains explicit requirements for public notice and review of proposed permitting actions. Subsection (1) requires that public notice of the opportunity to comment be provided for the following

permit actions: (a) Issuance of a draft permit; (b) Intended denial of a permit application; (c) Issuance of a draft significant permit revision; (d) Issuance of a draft general permit; (e) Issuance of a permit renewal; and (f) Scheduling of a public hearing. Subsection (6) states that a minimum of 30 days will be provided for public comment on all permit proceedings. In addition, subsection (7) provides the opportunity for a public hearing on any permit action where the DEP believes there is sufficient interest. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review under the Kentucky FESOP program will not be Federally enforceable.

In addition to requesting approval into the SIP, Kentucky has also requested approval of its FESOP program under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAPs through the issuance of Federally enforceable state operating permits. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants.

EPA believes that the five criteria for Federal enforceability, are also appropriate for evaluating and approving FESOP programs under section 112(l). The June 28, 1989, Federal Register document did not specifically address HAPs because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a FESOP program that addresses HAPs must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA. The January 25, 1995, memorandum cited above, provides further discussion of these criteria and of the extent to which limits on criteria pollutants such as volatile organic compounds and particulate matter may be considered to limit sources' potential to emit HAPs.

EPA plans to codify the approval criteria for programs limiting the potential to emit HAPs, such as FESOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section

112(l) of the CAA. (See 58 FR 62262, November 26, 1993). EPA anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, Federal Register document. The EPA also anticipates that since FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit the potential to emit HAPs directly under section 112(l) prior to the Subpart E revisions. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is to say, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in "maximum achievable control technology" (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is approving Kentucky's FESOP program so that Kentucky may begin to issue Federally enforceable operating permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Kentucky's FESOP program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, Federal Register document is met. That is to say, Kentucky's program does not allow for the waiver of any section 112 requirements. Sources that become minor through a permit issued pursuant to this program would still be required to meet the section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes Kentucky has demonstrated that it will provide adequate resources to support the FESOP program. EPA expects that resources will continue to be adequate

to administer that portion of the State's minor source operating permit program under which Federally enforceable operating permits will be issued since Kentucky has administered a minor source operating permit program for several years. EPA will monitor Kentucky's implementation of its FESOP program to ensure that adequate resources are in fact available. EPA also believes that Kentucky's FESOP program provides for an expeditious schedule to assure compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Kentucky's FESOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes Kentucky's program is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as major sources by obtaining Federally enforceable limits on potential to emit.

Eligibility for Federally enforceable permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the State's current rule prior to the effective date of today's rulemaking. If the State followed its own regulation, each issued permit that established a title I condition (e.g. for a source to have minor source potential to emit) was subject to public notice and prior EPA review. Therefore, EPA will consider all such operating permits which were issued in a manner consistent with both the State regulations and the five criteria as federally enforceable upon the effective date of this action provided that any permits that the State wishes to make federally enforceable are submitted to EPA and accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity with the program requirements.

With Kentucky's addition of these provisions and EPA's approval of this revision to the SIP, Kentucky's FESOP program satisfies the criteria described in the June 28, 1989, Federal Register document.

B. Review of Updated New Source Review Requirements

The second purpose of Kentucky's submittal was to update the Federally approved regulations to reflect the

updated State permitting regulations. In adopting a single set of air permitting regulations for both construction permits and operating permits, the State updated numerous new source review provisions in conjunction with its adoption of title V regulations. These rules specify which sources must have title V permits (namely major sources), which sources must have State minor source permits, and which minor sources do not need a permit. Additional rules specify requirements for minor sources, which are substantially equivalent to the title V operating permit requirements in 40 CFR Part 70. These requirements include application procedures, permit content, permit processing procedures, permit revision procedures, criteria for treating activities as insignificant, Federal enforceability, and coverage by a permit shield.

Numerous provisions governing major source new source review in Kentucky are unaffected by the State's submittal. Kentucky's rules, codified at 401 KAR 51:017 and 401 KAR 51:052, continue to provide substantive requirements for prevention of significant deterioration (i.e., major new source review in attainment areas) and major new source review in nonattainment areas.

II. Final Action

In this action, EPA is approving Kentucky's air permitting regulations as submitted on December 29, 1994. Furthermore, EPA concludes that Kentucky's purposes in submitting these regulations have been fulfilled. First, Kentucky has satisfied the criteria for issuing Federally enforceable state operating permits. Second, these new permitting regulations continue to satisfy relevant new source review requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 27, 1995 unless, by October 27, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 27, 1995.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

This action has been classified as a Table 3 action for signature by the Regional Administration under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in

association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State has elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind the State government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements, such sources are already subject to these regulations under State law. Accordingly, no additional costs to the State government, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to the State government in the aggregate or to the private sector.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: August 23, 1995.
Patrick M. Tobin,
Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(81) to read as follows:

§ 52.920 Identification of plan.

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(c) * * *

(81) Revisions to air permit rules submitted by the Kentucky Natural Resources and Environmental Protection Cabinet on December 29, 1994.

(i) Incorporation by reference. Revised Rule 401 KAR 50:035, "Permits", Sections 1 through 7, effective September 28, 1994.

(ii) Other material. None.

[FR Doc. 95-23963 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[IL78-2-6839; FRL-5274-9]

Final Promulgation of Revisions to the New Source Review State Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA approves a requested State Implementation Plan (SIP) revision submitted by the State of Illinois for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (amended Act) with regard to new source review (NSR) in areas that have not attained the National ambient air quality standards (NAAQS). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP for Illinois.

EFFECTIVE DATE: October 27, 1995.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following location:

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of these SIP revisions is available for inspection at the following location:

Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Jennifer Buzacky, Environmental